REMARKS/ARGUMENTS

Claims 1-10 are pending.

Claim 1 is amended to incorporate features of "comparing the current version of server code installed in each of the servers against the new version of server code stored in an upgrade code storage module" and "...performing a remote upgrade procedure on that server via the network system to replace the current version of server code in that server with the new version of server code at a user-specified time", which are disclosed at page 5, lines 3-4 and page 6, lines 7-9 of the specification of the present invention. No new matter is introduced.

Claim 6 is amended to incorporate features of "an upgrade code storage module for storing the new version of server code, the upgrade code storage module being either one of a hard disk module and a flash memory module" and "an upgrade time setting module for user to specify for the remote upgrade module to perform the remote upgrade procedure at a user-specified time", which are disclosed at page 5, lines 3-4 and page 6, lines 7-9 of the specification of the present invention. No new matter is introduced.

Claims 5 and 10 are incorporated into claims 1 and 6 respectively, and are accordingly cancelled.

Claims 2 and 7 are amended to read "wherein the network system is selected from the group consisting of intranet, extranet, and Internet," claims 3 and 8 are amended to read "...wherein the servers are selected from the group consisting of file servers, and data storage servers," and claims 4 and 9 are amended to read "wherein the new version of server code is selected from the group consisting of BIOS, firmware control code, and server management programs."

The rejections of claims 1-10 as anticipated by U.S. Patent No. 5,765,171 to Gehani et al., or as obvious over the Gehani et al. patent, are respectfully traversed. To anticipate the claims or establish a *prima facie* case of obviousness, all claim elements and limitations must be present in the prior art. MPEP § 2131; MPEP § 2143.03. In the present case, the prior art fails to achieve this standard.

The present claims are directed to a network-based server code auto upgrade method and system for use on a network system linked to a cluster of servers of the same type for upgrading the current version of server code in each of the servers to a new version of server code. As recited in the amended claims 1 and 6, the current version of server code installed in the servers is inspected and compared with the new version of server code stored in a hard disk or a flash memory module, and the current version of server code installed in the servers will be replaced with the new version of server code at a user-specified time in the event that the current version of server code installed in any one of the servers is older than the new version of server code. In other words, the current version of server code installed in the servers is first inspected and then compared with the new version of server code stored in the hard disk, and the current version of server code installed in the servers will be replaced with the new version of server code stored in the hard disk at the user-specified time if the current version of the server code is older than the new version of server code.

According to the Examiner, Gehani et al. disclose a network-based server code auto upgrade method. However, Gehani et al. states in col. 2, lines 19-40 that "During a scheduled replication session between source and recipient servers, the source server verifies if any data item in its database replica has changed......If the database modification time is less recent than the last propagation time, then no data item has changed and the replication session terminates. Otherwise, the source server examines each data item in its replica to determine which of the data items has changed since the last update replication session......The source server compiles a list of the data items that has been modified since the last update replication session and sends it to the recipient server......The recipient server compares the sequence numbers of the data items in the list with the sequence numbers of the same data items in its replica and copies those data items from the source server which has the greater sequence number".

From the above, it is evident that Gehani et al. merely disclose the comparison of the current version of server code and the new version of server code both stored in the source server (corresponding to the " servers" of the present invention), but fail to disclose the feature of inspecting the current version of server code installed in the recipient servers (equivalent to the "servers" of the present invention) and then comparing the current version of server code stored in the servers and the new version of server code stored in the upgrade code storage module. To be more specific, Gehani et al. fail to teach or suggest that the new version of server code is stored in the upgrade code storage module which can be either one of a hard disk and a flash memory.

The prior art does not teach or suggest all elements and limitations of the claims. Therefore, amended claims 1 and 6 are patentable over the Gehani et al. reference. Claims 2-4 and 7-9, dependent from the amended claims 1 and 6 respectively, are likewise patentable over the Gehani et al. reference for the same reasons as stated above.

In view of the foregoing amendments and remarks, Applicant submits that the present application is in condition for allowance. A Notice of Allowance is therefore respectfully requested.

No fee is believed due. However, the Commissioner is hereby authorized during prosecution of this application to charge any fees that may be required (except for patent issue fees required under 37 CFR §1.18) or to credit any overpayment of fees to Deposit Account No. 50-0337. If an extension of time is required in connection with this paper, please consider this a Petition therefor and charge any fees required to Deposit Account No. 50-0337.

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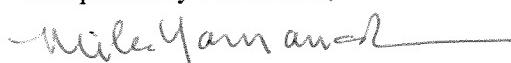
Miles Yamanaka
Reg. No. 45,665
FULBRIGHT & JAWORSKI L.L.P
555 South Flower Street , 41st Floor
Los Angeles, CA 90071
(213) 892-9200 – Telephone
(213) 892-9494 – Facsimile